

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CA0577
)	EEOC NO.: 21BA82958
MOHAMMAD MATIN KHAN,)	ALS NO.: 09-0395
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Mohammad Matin Khan's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CA0577; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On August 22, 2008, the Petitioner filed a four-count (Counts A-D) charge of discrimination with the Respondent in which he alleged that his former employer, Grand Victoria Casino ("Employer"), committed violations of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (the "Act"). Specifically, the Petitioner alleged the Employer discharged him on March 7, 2008, because of his religion, Muslim (Count A), his national origin, India (Count B), his age, 63 (Count C), and in retaliation for having engaged in a protected activity (Count D). On June 30, 2009, the Respondent dismissed the charge for lack of substantial evidence of discrimination. The Petitioner filed a timely Request on July 23, 2009.
- .2. The undisputed evidence in the investigation file shows the Employer is a riverboat casino operation that is required, by law, to keep persons under the age of 21 from entering its premises.
3. The Petitioner was hired by the Employer as a security officer.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. Pursuant to the Employer's Identification Procedures at Boarding Policy, security officers were required to check the identification of those seeking to enter the casino in order to determine if they were of legal age to enter the casino.
5. The Employer trained the Petitioner on how to spot a fake identification document on December 8, 2004; April 5, 2005; March 8, 2006; March 22, 2007, and February 27, 2008. When these trainings concluded, the Petitioner signed an acknowledgement sheet provided by the Employer, indicating that he had been trained and that... "in the event an Officer allows an underage patron to board the riverboat, the officer will be subject to discipline up to and including termination."
6. On March 5, 2008, the Petitioner and a second security guard, "J.L." (age 48, religion and national origin unknown), were stationed at the Employer's boarding gate. They were both responsible for checking identification in order to ensure that no underage persons entered the Employer's casino.
7. On that same day, one of the Employer's personnel reported to a security shift supervisor that an underage female was on the Employer's gambling floor without any identification. The Employer initiated an investigation to determine how the underage female was able to enter the casino. It was determined that the Petitioner and "J. L." were the security guards on duty that day, and that they were responsible for checking identification.
8. On March 7, 2008, the Employer via its General Manager, James Thomason, discharged both the Petitioner and "J.L." because they had allowed the underage female to enter the casino.
9. In his charge and Request, the Petitioner contends the Employer discharged him because of his religion, his national original, and his age. Further, he contends the Employer discharged him in retaliation for having opposed unlawful discrimination on February 20, 2008, February 26, 2008, and March 2, 2008, when he complained to his manager about his co-workers' discriminatory comments directed at him.
10. The Petitioner argues that similarly situated security officers who were not in his protected classes were not discharged by the Employer for allowing underage patrons to enter the gambling floor. The Petitioner points to three employees who were issued final warnings on August 20, 2003 and July 12, 2002, rather than discharged.
11. In its response, the Respondent asks the Commission to sustain its dismissal for lack of substantial evidence. The Respondent argues there is no substantial evidence that the Employer's legitimate, articulated reason for discharging the Petitioner was a pretext for discrimination or retaliation.

Conclusion

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed all counts of the charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

First, the Petitioner has not established a *prima facie* case because his alleged comparables are not similarly situated. As the Respondent correctly states, in order to be "similarly situated," there must be evidence that the alleged comparables were subject to the same decision-maker. See Mayhew and State of Illinois, Dep't of Public Aid, IHRC 5318, May 28, 1996. In this case, the Petitioner identified employees who had been disciplined with written warnings in 2002 and 2003 for allowing underage patrons to enter the casino. However, this disciplinary action occurred prior to James Thomason's January 2008 tenure as General Manager for the Employer. Therefore, the Petitioner was subject to the standards of a different decision-maker at the time he was discharged in 2008.

Second, the undisputed evidence in file shows that other security officers were also discharged in 2008 for allowing underage patrons into the casino. In addition to "J.L.", in January of 2008, the Employer discharged two other security officers for allowing an underage patron to board the vessel.

Assuming *arguendo* the Petitioner established a *prima facie* case of discrimination and retaliation, there is no substantial evidence in the file that the Employer's stated reason for discharging the Petitioner was pretextual. The undisputed evidence in the file demonstrates that Thomason consistently terminated security officers who allowed underage patrons to enter the Employer's casino. There is no substantial evidence that Thomason applied this policy in a discriminatory or retaliatory manner.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Grand Victoria Casino, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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Page 4 of 4

In the Matter of the Request for Review by: Mohammad Matin Khan

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Entered this 27th day of January 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini